

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2200 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and
MR.JUSTICE R.K.ABICHANDANI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

GUJARAT STEEL TUBES LTD

Versus

SALES TAX OFFICER (I)

Appearance:

MR KH KAJI for Petitioner

MR P.G. DESAI with MR M.G.DOSHIT of M/S MG DOSHIT & CO
for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE R.K.ABICHANDANI
Date of decision: 03/12/97

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The petitioner challenges the notices issued by the Sales Tax Officer (I), Ahmedabad, the respondent No.1 herein, on 20.2.1992 for assessment periods 1982-83 to 1988-89, on the ground that no assessment orders could be

passed in respect of these years because the assessment had become time barred.

2. The petitioner is a manufacturer of Steel tubes at Ahmedabad, having its registered office in Ahmedabad. According to the petitioner, it was filing quarterly returns in respect of its taxable turnovers under the Gujarat Sales Tax Act, 1969 and the Central Sales Tax Act, from time to time. However, from the period commencing from 1st July, 1982 till the date of the filing of the petition i.e. till 26th March, 1992, no assessment orders were received by the petitioner and all assessments for the years 1982-83 to 1988-89 were pending.

3. It is the petitioner's case that as per the provisions of Section 42 of the Gujarat Sales Tax Act, as it operated at the relevant time, assessment orders under Section 41(3) or Section 41(4) were required to be passed before the expiry of two years from the end of the year in which the last monthly, quarterly or, as the case may be, annual return, was filed, unless the assessment proceedings were stayed under the proviso to Section 42 by a general or special order made by the authority concerned. According to the petitioner, for the assessment for year 1982-83, the period of limitation prescribed under Section 42, expired in December, 1986, for year 1983-84, it expired in December, 1987 and so on for the subsequent assessment years. It is stated that for the first time the petitioner was served with an order on 30.12.1987 staying the assessment proceedings for the period 1983-84 upto 31.12.1988. According to the petitioner, for the year 1982-83, no such order was made and the assessment for that year had become time barred. It is stated that another order purporting to stay the assessment proceedings for the assessment years 1982 to 1985 upto 31.12.1988 was served upon the petitioner on 31.12.1985. These orders were made without issuing any show cause notice under Rule 37A required to be issued before making such orders. It is in terms stated on oath in the petition that apart from these two stay orders, no other order was made under the proviso to Section 42, staying the assessment proceedings for any of these assessment years. It is also the petitioner's case that these orders wrongly mentioned that consent was given by the petitioner for waiving the notice, which was required to be issued and that it had agreed to the making of the stay order.

4. It has been contended on behalf of the petitioner that the two stay orders which were issued by the

respondent No.1 for the year 1983-84 and for 1982-1985 were made without hearing the petitioner and without recording any reasons for staying the proceedings. It was contended that the petitioner had never given any consent for passing of such orders and it is only with a view to avoid indicating reasons and circumstances necessitating stay of the proceedings in writing, that the respondent authority had vaguely referred to some consent having been given by the petitioner. It was contended that the reliance placed in paragraph 5 of the affidavit-in-reply filed by the respondent authority on a decision of this Court in FAG Precision Bearings V. Sales Tax Officer (Special Civil Application No. 5343 of 1987 decided on 12th/13th February, 1992) was wholly misconceived because that decision has been reversed by the Supreme Court on 9th December, 1996 in FAG Precision bearings V. Sales Tax Officer (I) and anr., reported in 104 S.T.C 143.

5. There is no dispute about the fact that as per the provisions of Section 42 of the State Act, as it operated at the relevant time, no order of assessment for an year or part of an year, could be made under sub-section (3) or sub-section (4) of Section 41 of the Act, at any time after the expiry of two years from the end of the year, in which the last monthly, quarterly or, as the case may be, annual return, was filed. As per the proviso to Section 42(1), it was inter-alia provided that the Commissioner may, subject to such conditions as may be prescribed by a general or special order, stay either generally or for a specified period, the assessment proceedings of a dealer or a class of dealers. Under Rule 37-A(2) of the State rules framed under the State Act applicable at the relevant time, it was provided that the Commissioner shall reduce in writing the reasons and circumstances necessitating stay of any proceedings in respect of a dealer or a class of dealers. Construing this provision of Section 42 of the State Act and Rule 37-A of the Rules made thereunder, the Supreme Court in FAG Bearings (supra) has held that the said power to stay assessment proceedings can be exercised only in extra-ordinary circumstances and for supervening reasons which cannot be attributed to the default or failure of the assessing authorities. It was held that it was not enough to say, as was done in that case, that the assessment proceedings were pending and would take 'some more time'. It was further held that the stay of the assessment proceedings had consequences of a civil nature upon an assessee and that more the time elapses, the more difficult it becomes for the assessee to prove its accounts and claim set-off, exemptions and the like. It

was therefore, held that in the circumstances, the power under Rule 37-A of the said Rules may not be exercised by the Commissioner without first giving to the assessee notice to show cause why his assessment proceedings should not be stayed for a stated period. Such notice should set-out what the reasons and circumstances are, which according to the Commissioner necessitated such stay, so that the assessee has the opportunity of meeting the same. It was in terms held that this requirement of natural justice was required to be read in Rule 37-A, having regard to its scope.

6. In the instant case, as the record stands, there were only two orders issued purporting to stay the proceedings for the years 1983-84 and years 1982 to 1985. On a close scrutiny of these two orders which are at annexure "A" collectively, we note that in the first order relating to the assessment year 1983-84, no reason has been mentioned, nor any circumstance indicated, which led to the order and it has been stated that it was assumed that the assessee had given his consent for waiving a show cause notice. In the second order also, no reason or circumstance leading to the making of the order, is stated and it is only mentioned that since the assessment could not be completed and that since it was assumed that there was a consent on the part of the assessee for staying the proceedings, the proceedings were so stayed. Both these orders, in our opinion, do not give any reason, much less any cogent reason, for staying the assessment proceedings. They vaguely mention about assumption of consent on the part of the assessee for waiving the show cause notice. Both the orders are printed orders with some blanks, which are filled in and even the mention about assumption of consent of the assessee appears in the printed matter. When the respondent authority was required to give a show cause notice under Rule 37A of the said Rules before making any order staying the proceedings, we fail to understand as to how and in what manner an assumption about the consent of an assessee could be made in absence of any positive consent being given by the assessee. We do not find any contemporaneous record to indicate that any consent was given by the assessee. We are therefore, not prepared to accept the stand reflected in the orders that the proceedings were stayed on the basis of the consent of the assessee.

Mere pendency of the assessment proceedings cannot itself be a ground for staying the proceedings, as held by the Supreme Court in FAG Precision Bearings (supra). The power to stay the proceedings can be

exercised only in extra-ordinary circumstances and for supervening reasons, which cannot be attributed to the default or failure of the Assessment Officers and it would not be a good or sufficient reason just to say that since the proceedings are pending, stay is being granted.

7. It is not disputed that no notice under Rule 37A of the said rules was issued in respect of the years in question for which the assessment would have been time barred to show cause as to why the proceedings should not be stayed. We are also satisfied that the two stay orders which are at Annexure "A" collectively, do not record any valid reason as contemplated by Rule 37A of the Rules. Therefore, these two stay orders cannot be sustained and will not have the effect of extending the period of limitation for making the assessment orders.

The petitioner seeks to challenge the notices dated 20.2.1992 issued by the respondent for proceeding with the assessment proceedings and making the assessments for the year 1982-83 to 1988-89. At the hearing of the petition, it was noticed that so far the notice dated 20.2.92 in respect of the year 1988-89 was concerned, it could not have been assailed on the ground that it was in respect of a time barred assessment. The learned Counsel for the petitioner after verifying this particular notice in respect of year 1988-89, submitted that the petitioner does not press for it's challenge against that assessment notice. So far the notices dated 20.2.1992 for the assessment periods 1982-83 to 1987-88 are concerned, for the reasons that we have given hereinabove, they cannot be sustained since assessment for those periods had been time barred and there was no valid stay of those proceedings. We therefore, set aside the two stay orders at Annexure "A" collectively along with the impugned notices dated 20.2.1992 for the assessment periods 1982-83 to 1987-88. Rule is made absolute accordingly.

Needless to say that it will be open for the respondent authority to take such action as may be permissible to it under the law.

*/Mohandas